



SHORELAND ZONING NEWS

Volume 18, Issue I

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Inside this issue:

Guidelines to be Amended	1
CEO Top 10 List; Importance of Documenting	2
Digitized Maps; Recent Legislation— LD 1161	3
Reminder and Q & A	4

Please Share

For over 15 years, the *Shoreland Zoning News* has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the *News* is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



Guidelines Being Amended, cont...

In the last several issue of the *Shoreland Zoning News*, the Department has noted that the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, Chapter 1000* (Guidelines) are in the process of being amended. Although the process is not complete at this time, we are optimistic that the changes will be completed before our next issue of this newsletter.

The Department has completed its draft of the amendments to the Guidelines, which will shortly journey to the Board of Environmental Protection (Board) to initiate the rulemaking procedure. We have tentatively scheduled taking the draft Guidelines to the Board on August 11th to be posted to public hearing. We further anticipate that the public hearing will be scheduled for September 8th (tentative), likely in Augusta. After the hearing the Department and Board will consider all public comments from the hearing and make any further changes to the Guidelines as the Board deems appropriate. If the current plan is maintained, we expect the Board to formally adopt the new rules on November 3rd.

In addition to the Board adopting the new Guidelines, they will also establish a deadline for municipalities to adopt the new standards into their local ordinances. We would expect that municipalities will have at least a year and a half to do so, which should allow ample time to re-draft local ordinances and present the

amendments at town meeting, or be adopted by council.

Although still in draft form, we will highlight the key current proposed Guideline changes:

- Creating a new General Development II district that will apply to areas currently not heavily developed at the time the general development district is created, and will require a 75' setback.
- Will now require that all structures be moved back to meet the setback to the greatest practical extent whenever any permanent type of foundation is added to a non-conforming structure. This will now include slabs and frost walls.
- Allow a small storage shed if there is no other accessory structure on the lot and the setback requirement cannot be met.
- In areas of unstable and highly unstable coastal bluffs, principal structures must be set back from the top of the bluff, instead of from the maximum spring tide line.
- Created a new section to regulate new recreational trails with varying standards according to the intensity of the use (primitive, non-motorized, and motorized).
- Recommending that holding tank ordinances be prohibited from allowing first-time systems in the shoreland zone.

(Continued on page 2)

(Continued from page 1)

- We are also proposing that new septic systems, **including fill extensions**, be kept at least 75 feet from the water.
- Amend the standards relating to Timber Harvesting, to be consistent with the Department of Conservation's state-wide timber harvesting standards.
- Incorporating the new point system language from the NRPA cutting standards within the vegetation clearing standards, with that section proposed to now be entitled *Clearing of Vegetation for Activities other than Timber Harvesting*.
- Section 16 appeals provisions were reorganized and rewritten to provide better clarity.

There are numerous other amendments to the Guidelines being proposed, largely for clarification purposes, but the above provides you with a brief summary of the key changes being proposed to the Board. Please don't hesitate to contact us for additional information regarding the proposed changes.



CEO Top 10 List for Fieldwork

Top 10 List of things a CEO should remember as the field season continues:

1. Never go in the field without your camera (or your boots).
2. Keep good notes, even if you think you'll remember it later. . . you won't.
3. If you see mud or muddy water heading off site, CALL your regional DEP office.
4. Make sure you are officially re-appointed and SPO has all the proper paperwork from you in each of your municipalities.
5. If your Shoreland Zoning Ordinance has 2 inches of dust on it, you're not reading it often enough!
6. All shoreland zoning permits that include soil disturbance must be accompanied by a written erosion and

sedimentation control plan.

7. Alders are trees too. . really they are!
8. Resource Protection Districts do not have an exemption for a winding path to the water
9. If it looks a little funny. . . measure it!
10. When in doubt, call DEP. Rich – 287-7730; Tracey – 941-4116; Mike 822-6328.



The Importance of Documentation

We must all try to remember never to go out into the field without our camera. Be it digital or not, a picture says a thousand words when it comes to violations. It is important that we can document violations with photographs at the first instance they are found. Photographs of the violation is the most effective way to show the landowner, the selectmen, and, if need be the, court what has occurred, particularly if the violation creates a serious danger to the public health or serious damage to the environment. When you are back at the office with the developed or printed pictures they should be numbered. On a separate sheet you should record notes regarding where each picture was taken (address, distance from the subject, direction in which it was looking, etc.), who took it, the time it was taken, and the date on which it was taken. The information you need to put on the photographs is the reason why it is important to take good notes in the field. Try to get into the habit of sketching the property while you are on site and marking where you were standing when you took the pictures. This is a good time to jot down the important distances or other measurements (you brought your 100 foot tape measure, right?) that you will need if you issue a formal notice of violation. And remember, the better the notes you take in the beginning and as you go along, the easier it will be to get everything together if you have to take enforcement action.



Miscellaneous Notes From the SLZ Unit...

- The 2005 biennial shoreland zoning report to the Legislature is now on our website. You can view the report by going to the following link: www.state.me.us/dep/blwq/report/legisreport.htm
- There have been several recent staff departures from our division's Field Services & Enforcement Unit. Please bear with us while we re-fill these positions.



Digitized Maps Anyone???

The Department has recently undertaken a behemoth project to digitize, or obtain digitized, shoreland zoning maps for every town in the State. Why would we want to do that? The digitized maps will be integrated into our current GIS/ArcMap package and will be of great benefit to the Department while working with towns and property owners. Eventually (after first obtaining digitized town parcel maps) we could better discuss applications or violations with municipal officials by viewing lots while on the phone with officials. This would also provide the Department a better permanent record of town shoreland zoning maps that could not be easily destroyed. We also anticipate sharing these maps with the numerous towns that have not yet digitized their shoreland zoning maps.

We have begun digitizing the maps the Department originally created and established as the official maps for towns with State-imposed shoreland zoning maps (60+ maps) and will continue from that point once those are completed.

The Department is aware that many municipalities have already undertaken this task. Some have even added this data to their website for anyone's benefit. In an effort to expedite this project, and to better serve the towns, we ask that if your town has already created these maps and is willing to share these data files with the Department, please contact us. You may contact one of the three of us in the Shoreland Zoning Unit initially (listed on Page 4 of this publication), but not all being computer savvy, don't be too surprised if we have our computer tech staff work out the details with you. We would sincerely appreciate any assistance you could provide us with this project!



We're Looking for Some Good Stories and Questions!!!

Have any good tales from the field? Nightmares from the courtroom? Questions that frequently arise? Feel free to contact us with these quips and we will consider sharing the stories in this newsletter in an effort to help others. The Shoreland Zoning News is intended to provide you with information to help you do your job!



Recent Legislation— LD1161

This past legislative session saw some interesting bills as is not uncommon. One bill that was approved is particularly noteworthy, especially to the municipal appeals boards. LD1161 began as a bill that would, in part, grant the Department legal standing for any board of appeals action that affects the shoreland zone. This did not glean much support so the bill morphed into something quite different. The bill was revised to require that municipalities provide a copy of all variance requests (that affect shoreland provisions) to the Department at least 20 days prior to action by the municipality. This includes a copy of the application and all other supporting information provided by the applicant. Although the Department did not sponsor the bill, it did support it. The bill was approved by the legislature and signed into law by the Governor on June 23, 2005. It will become effective on September 17, 2005.

We have recently received feedback from several municipal officials that this will surely present a conflict as many local ordinances currently require an applicant submit a variance application more than 20 days prior to the next board of appeals meeting. As such, an applicant could submit an application 21 days before the next board of appeals meeting, thereby not allowing adequate time for the town to comply with this new law. Our response to this is simply that this is new State law and therefore it must be complied with. Municipalities that face this predicament should amend their local ordinances in the near future to afford themselves ample time to comply with this new requirement.



E-mail Addresses...

We have had a number of folks contact us with their e-mail addresses seeking to receive this newsletter electronically. Not only would this save on printing costs, but you could be one of the first to get this newsletter hot off the press! If you would like/ be willing to receive this publication electronically, please contact us with your e-mail address. Feel free to e-mail your address to Mike Morse (Michael.J.Morse@Maine.gov) and he'll put you on our electronic mailing list.

Reminder:

Now that the recent “town meeting season” has passed for most towns, we want to take the opportunity to remind towns that if they adopted any amendments that affect shoreland areas they are not legally effective until the Department has reviewed and approved those amendments. This requirement also pertains to re-codification of ordinances.

Quite frequently when sending a municipality or property owner a written opinion on a matter our ordinance citation is not recognized by municipal officials due to re-codification that occurred years ago. If this is the case in your town, please send a copy of this amended ordinance for our review.

Contact Us:

Rich Baker, Coordinator, Augusta:	287-7730
Tracey Thibault, Bangor:	941-4116
Marc Russell, Presque Isle	764-0477
Mike Morse, Portland	822-6328

Questions & Answers:

- Q. If I own a property that has 400 feet of shore frontage on a great pond, how many paths can I have to the water?
- A. Technically, one 6-foot wide meandering path is allowed to the water. Even though you own a lot with twice the minimum required shore frontage, the regulations allow only one path per lot. In some cases towns have allowed one 6-foot wide path per every 200' of shore frontage on a single parcel. Although this is legally inappropriate, the Department is not prepared to take any enforcement action against either the town or the property owner if the town allows this. The Department would clearly prohibit a town allowing a property owner to have a 12' wide path to the water using this same example site.



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